IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B.CIVIL WRIT PETITION NO.2891/2002.

Data Ram. Vs. M.A.C.T., Neem-ka-Thana & Ors.

01.09.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.S.K.Singodiya, for the petitioner.
Mr.Ajay Gupta, for the respondents.

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This writ petition has been filed by the petitioner challenging the order Annexure-2 dated 16.03.2002 by which the application dated 23.12.1995, filed by the petitioner, who was the owner of the motor vehicle, for setting aside the award dated 18.07.1995, has been dismissed.

The facts in nutshell are that a claim petition was filed by Smt.Sravani Devi and others on account of the fact that an accident took place on 10.11.1990 in which the deceased Chandra Ram died. Consequently, the claim petition having been filed before the Motor Accident Claims Tribunal, Neem-Ka-Thana the notices were issued to the non-applicants including the petitioner who was the respondent No.4 in the said case.

A perusal of the award dated 18.07.1995 goes to show that these facts are not in dispute that the petitioner who was the respondent No.4 before the Tribunal after being served filed a reply to the claim petition in which it was averred, by the petitioner

herein, that he had in fact sold the vehicle about 2½ years prior to the accident to one Murlidhar. The proceedings of the claim petition carried on and on 25.07.1994, the petitioner who was non-petitioner No.4 before the Tribunal and the non-petitioners No.2 and 3 failed to appear before the Tribunal and consequently, the order was passed on 25.07.1994 for proceeding ex-parte against the petitioner and the non-claimants No.2 and 3 also. Ultimately, an award was passed in favour of the claimants on 18.07.1995 awarding damages of Rs.2,53,500/-.

The petitioner, it seems, then moved an application for setting aside the ex-parte award dated 18.07.1995 on 23.12.1995. The said application has been dismissed by the learned Motor Accident Claims Tribunal by the impugned order dated 16.03.2002. Hence, this writ petition.

I have perused the impugned order as well as the award dated 18.07.1995 and heard learned counsel for the parties.

In the instant case, it is not disputed that the petitioner was served by the Tribunal with the notice of the claim petition and in response to the aforesaid notice, the petitioner who was respondent No.4 before the Tribunal submitted his reply before the Tribunal but subsequently, on 25.07.1994, the petitioner failed to appear before the Tribunal and did not participate in the

proceedings or lead any evidence in support of the pleas raised in his defence in the reply and the learned Tribunal ordered the proceedings to be taken ex-parte against the petitioner and also against the non-petitioners No.2 and 3 was had also failed to appear on 25.07.1994.

The petitioner has not challenged the order dated 25.07.1994 whereby the learned Tribunal ordered that the proceedings be taken ex-parte against the petitioner. No sufficient cause was shown as to why the petitioner did not appear on 25.07.1994 or was prevented by any other reason for not getting the said order set aside. The petitioner has merely challenged the award dated 18.07.1995 as if the said award has been passed ex-parte against the petitioner. I am of the view that present award which was passed after the petitioner had been duly served and has filed his reply and participated in the proceedings but at a subsequent stage on 25.07.1994 failed to appear before the learned Tribunal cannot be termed to be an ex-parte award. If at all the petitioner was aggrieved, he could have moved an application for setting aside the ex-parte order dated 25.07.1994 which he failed to do or filed an appeal against the award. Since Section 173 of the Motor Vehicles Act mandates a deposit of the amount as provided therein as a condition precedent for filing the appeal against the award the petitioner it seems realising this chose to file the application for setting aside the ex-parte award.

In the facts and circumstances, I am not inclined to interfere with the impugned order dated 16.03.2002. The learned Tribunal while dismissing the application has given cogent reasons for not accepting the application dated 23.12.1995 and even the said application dated 23.12.1995 apparently has been filed beyond the period of limitation from the date of award dated 18.07.1995 i.e. after 158 days.

In view of the above, the writ petition fails and is consequently dismissed. The stay application also stands dismissed.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.